ginning under Henry VII. to its extinction under Elizabeth and James I., on the ground that it was unconstitutional, has been written. The volume, consequently, must add substantially to our knowledge of sixteenth-century law. The recorded endeavors of this court to administer equity, and to remedy some of the more obvious deficiencies of the old common law, are sure to be found especially instructive.

For 1899 Mr. G. I. Turner is preparing a volume which will contain copious extracts from the rolls of the Forest Courts. The workings of the severe and complicated Forest Law, fashioned in the interest of the mediæval hunting kings, has hitherto been insufficiently explained, and Mr. Turner's book will throw light on an important and interesting subject. The Society also contemplates a volume of extracts from the records of the exchequer of the Jews. Its most noteworthy plan, however, is to mark the year 1900 by the experiment of placing in the hands of subscribers a portion of the Year Books. The scheme at present is to issue every other year a volume of the Year Books, which will thus alternate with volumes derived from other sources. It is proposed to begin at the earliest possible period, namely, with a new edition of the Year Books of Edward II., and to continue in regular order, but without trespassing on the field that Mr. Pike, in his editions of those Year Books of Edward III. not previously printed, is making his own. The text is to be based on the best manuscripts, and is to be accompanied by an English translation, and references to the plea rolls. The work is to be intrusted to Mr. F. W. Maitland and Mr. Turner. The success of the project, it is said, will depend largely on the opinion that is entertained of it in America; and if sufficient subscribers are attracted, it is proposed to accelerate the process of publication. Certainly, the Selden Society should not lack support in its effort to set before English and American readers, in a creditable and intelligible form, "the most distinctive monuments of the common law."

ALLEN *v.* FLOOD. — The long-expected decision of the House of Lords in the case of *Allen* v. *Flood*, has been received in this country as well as in England with a degree of interest that it undoubtedly deserves. The case has been recently discussed in so many publications that it is perhaps unnecessary to recapitulate the facts. The point decided appears to be (so far as can be ascertained from the partial report in 4 Times L. R. 125) that an action will not lie against an individual defendant for causing the discharge of the plaintiff by the latter's employer, if the defendant has not committed, or caused to be committed, any act which would be of itself unlawful, without regard to the motive with which it might have been done. Apart from the great practical importance of the decision as a precedent in the numerous cases now arising with regard to trades unions, the reasoning of the majority in the House of Lords is of extraordinary interest as affecting the fundamental theory of the law of torts.

There is a view, more or less clearly set forth in the opinions of many judges and the writings of many legal authors, in both England and this country, that when a plaintiff has proved that the defendant has intentionally caused him to suffer pecuniary damage, he has shown a good cause of action, unless the defendant shows some ground of justification. A broad general privilege of every person to conduct his affairs as he chooses, and in particular to manage his business in whatever way seems

most profitable, is considered to furnish sufficient justification in almost all cases where the defendant has not made use of fraud, violence, or other means conceded to be illegal apart from the motives by which it may be directed. Where the question of the defendant's responsibility for his acts has been approached in this manner, however, it has almost always been declared, either by implication or by direct words, that this justification would not extend to cases where mere personal spite, or other wholly improper considerations, furnished the sole or predominant motives for the defendant's act. The presence of this gap in the whole range of acts of intentional infliction of damage, between the class of acts which are unlawful without regard to motive and those which are, in point of law, wholly justifiable and lawful, is what gives practical importance to this whole view of the theory of the law of torts. That there was such a gap, was expressly stated, not only by the Court of Appeal in the case under discussion, *Flood* v. *Jackson*, [1895] 2 Q. B. 21, and in *Temperton* v. *Russell*, [1893] 1 Q. B. 715, but also by several of the judges and law lords in *Mogul Steamship Co.* v. *McGregor*, 23 Q. B. Div. 598, [1892] App. Cas. 25, where the decision upon the facts of the case was in favor of the defendant. And the existence of such a gap has been assumed, if not expressly asserted, in a great number of American cases, extending from *Walker* v. *Cronin*, 107 Mass. 555, to the very recent case of *Oxley Stave Co.* v. *Hoskins* (see 56 Alb. Law Jour. 400).

Now the decision in *Allen* v. *Flood* seems to cut in back of the whole modern theory just stated, and render all discussion of what constitutes justification or privilege, outside of the cases of recognized affirmative defences, of little practical value. The majority distinctly lay down the proposition that an act which is not in itself unlawful apart from the motive of the person doing it, as falling within some of the ancient and tolerably well-defined classes of wrongful acts, cannot render a man liable to an action at law, however bad the motives on which he may have acted, and however serious the loss he may succeed in inflicting upon others. The existence of the gap above referred to, which admits of some acts being considered tortious on account of the bad motive accompanying them, is altogether denied. It may be maintained, of course, that this amounts to saying that the privilege of doing as one chooses sweeps back to the boundaries of fraud and violence. The court, however, do not so treat the question; they do not go into any question of justification, because they recognize no *prima facie* wrong.

That this doctrine of *Allen* v. *Flood* is simple, convenient in practice, and in accord with a conservative view of the spirit of the common law, seems almost undeniable. Though many will argue that it impairs the invaluable elasticity of the common law, and will keep out of the courts many cases in which the conditions of modern society demand judicial interference even though such interference may in some respects appear difficult and dangerous.

Radical as is the decision in *Allen* v. *Flood*, it leaves a loophole through which the doctrine that unjustifiable motives can be the determining element in a tort might, even in England, come back into the law. In that case there was no combination of several defendants to commit the acts complained of. It is expressly recognized, in at least two opinions, that the presence of an element of conspiracy might make a very material difference. If such an element can, as a matter of law, make that illegal which would not be illegal without it, all the questions as to

"malice" and unjustifiable motives can come before the courts in the same form as before, whenever there are several defendants. In England it appears to be likely that conspiracy will not be held to furnish a cause of action in any case where an action would not lie against a single defendant according to the doctrine of *Allen* v. *Flood*; to that effect, at any rate, is a decision in a court of the first instance, *Huttley* v. *Simmons*, 14 Times L. R. 150, following immediately after the announcement of the decision in the House of Lords. In this country there have been so many decisions holding defendants liable for what the courts consider malicious interference with the plaintiff's business, that it seems probable that the judges will pay little respect to *Allen* v. *Flood*, beyond distinguishing it as without the element of conspiracy which has been present in all the American cases, and hereafter giving more attention to this last point. The most satisfactory method of dealing with this whole subject, it may be suggested, is that now likely to be adopted in England, by simply making the more objectionable forms of boycotting criminal offences, and giving up all attempts to stretch the law of torts to cover cases lying outside of the clearly recognized classes of actionable wrongs.

THE ANNULMENT OF A LOTTERY FRANCHISE. — Under authority conferred by acts of the Kentucky Legislature, the city of Frankfort, by written agreement, sold to one Stewart a lottery scheme devised by that municipality. One Douglas afterward acquired Stewart's right. Later, the Kentucky Legislature repealed the charter of the Frankfort lottery, and in the new Constitution of the State all lotteries were forbidden and all lottery privileges and charters previously granted were revoked. It was held by the Supreme Court of the United States that this constitutional provision, as applied to Douglas's claim of a lottery privilege, was not repugnant to that clause of the Constitution of the United States providing that no State shall pass laws impairing the obligation of contracts. In this case, *Douglas* v. *Kentucky*, 18 Sup. Ct. Rep. 119, Mr. Justice Harlan thus states the position of the court: ". . . we hold that a lottery grant is not, in any sense, a contract within the meaning of the Constitution of the United States, but is simply a gratuity and license which the State, under its police powers, and for the protection of the public morals, may at any time revoke, and forbid the further conduct of the lottery; and that no right acquired during the life of the grant, on the faith of or by agreement with the grantee, can be exercised after the revocation of such grant and the forbidding of the lottery, if its exercise involves a continuance of the lottery as originally authorized."

This decision, which follows the well-known case of *Stone* v. *Mississippi*, 101 U. S. 814, clearly illustrates the present tendency of the courts to restrict within as narrow limits as possible the doctrine of *Dartmouth College* v. *Woodward*, 4 Wheat. 518. Surely in many respects this tendency is gratifying. In this very matter of lotteries alone, were it the law that a lottery grant is a contract which the State has no power to revoke, not only would the moral consequences be harmful to society, but there would also result a most serious weakening of governmental authority. In these lottery cases, indeed, there is involved a broad and fundamental question as to the true scope of legislative power. Unquestionably the so-called "police power" is a proper exercise of the legislative function; but the great difficulty has been to fix upon its true limits. Whatever be those limits as to